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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,514	05/11/2005	Pedro Daniel Soares	4-22787/A/PCT	5051
324 7590 04/11/2007 CIBA SPECIALTY CHEMICALS CORPORATION PATENT DEPARTMENT 540 WHITE PLAINS RD P O BOX 2005 TARRYTOWN, NY 10591-9005			EXAMINER NGUYEN, TRI V	
			ART UNIT 1751	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/534,514

Applicant(s)

SOARES ET AL.

Examiner

Tri V. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. In the amendment filed on February 16 2007, Claims 1,2,5,6 and 13 were amended and Claim 4 was cancelled. The currently pending claims considered below are Claims 1-3, 5-11 and 13.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-3, 5-11 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment of claim 1 introduces new matter. The added limitation in the claim (i.e. the warp yarn being doubly interwoven) lacks literal basis in the specification as originally filed, see *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983) *aff'd* mem. 738 F.2d 453 (Fed. Cir. 1984).

Claims 2, 3, 5-11 and 13 are dependent on claim 1 thus inherit the same deficiency.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-3, 5-11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it unclear as if the warp yarn is interwoven once or twice (Is the weft yarn fibre material in line 2 the same as the natural white cotton yarn? Is the dying step performed on the fabric with warp yarn and weft yarn or warp yarn and white cotton yarn only?).

Claims 2, 3, 5-11 and 13 are dependent on claim 1 thus inherit the same deficiency.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-3, 5, 7, 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund et al. (US 5,958,082) in view of in view of Womble (US 3,043,645).

Lund et al. discloses a method comprising the steps of dyeing a fabric such as cotton and denim (col 3, lines 6-13) with naphthol dyes (col 3, lines 13-16) and subjecting the fabric to a stone-wash treatment with enzymes (col 3, lines 39-43) or stones (col 3, lines 52-57 and col 7, lines 5-13).

However, Lund et al. do not explicitly disclose the steps of interweaving the cotton yarn with a natural white yarn. In the analogous art fabric treatment, Womble discloses a method wherein the cotton yarn is dyed, interwoven with a white yarn and treated with a diazo compound (at least col. 3, line 19 to col. 4, line 4). Womble discloses the use sulfur dyes; however, Lund et al. shows equivalency of dyes by disclosing that sulfur or naphthol can be used in the dyeing step (col. 3, lines 13-16). Changing the order of steps does not render a claimed process nonobvious over the prior art, see Ex parte Rubin, 128 USPQ 440, 441, 442

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(POBA 1959). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Lund et al. with the intermediary steps of interweaving the cotton yarn with a white yarn and treating with a diazo salt as taught by Womble. One would have been motivated to modify the method to obtain a fabric with diverse patterns and coloring schemes.

8. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund et al. in view of Womble as applied to claim 1 above, and further in view of in view of Dixon (US 5,460,966) or Barfoed et al. (US 5,925,148).

Lund et al. and Womble disclose the method of claim 1 but do not explicitly disclose the subsequent step of dyeing the fabric. In the analogous art fabric treatment, Dixon discloses a sequential process of fabric dyeing in which a stone-wash step is followed by a dyeing step in which a second color is imparted to the fabric (col 1, line 66 to col 2, line 25). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Lund et al. and Womble with the additional step of dyeing the fabric with a second dye as taught by Dixon. One would have been motivated to modify the method to obtain a fabric with various coloring schemes.

Lund et al. and Womble disclose the method of claim 1 but do not explicitly disclose the subsequent step of dyeing the fabric. In the analogous art fabric treatment, Barfoed et al. discloses a method of fabric dyeing in which a stone-wash step is followed by a dyeing step with a secondary dye (col 10, lines 5-19 with examples of dyes [col 3-5] and enzymatic treatment [col. 5-7]). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Lund et al. and Womble with

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the additional step of dyeing the fabric with a second dye as taught by Barfoed et al. One would have been motivated to modify the method to obtain a fabric with various coloring schemes.

9. Claims 1,2, 5, 7, 9-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Besnara (US 5,667,530) in view of Finlayson, III et al. (US 4,351,638) and Womble (US 3,043,645).

Benasra discloses a method of overdyeing a fabric in which a dyed terry cloth is subjected to a stone-wash treatment with pumice granule (col 2, line 66 to col 3, line 23) followed by an additional dyeing step in which the color of the second dye is different than the original dye color (col 5, lines 37-47). However, Benasra does not explicitly disclose the original dye and the steps of interweaving the cotton yarn with a natural white yarn. Besrana recites that "any known dye suitable for use with terry cloth can be used" (col. 2 line 67 to col 3, line 3). In the analogous art of fabric dyeing, Finlayson, III et al. discloses that naphthol dyes are used to dye terry cloth (col 1, lines 9-23). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute naphthol dyes in the method as taught by Besrana. One would have been motivated to modify the method to arrive at a dyed terry cloth. Furthermore, Womble discloses a method wherein the cotton yarn is dyed, interwoven with a white yarn and treated with a diazo compound (at least col. 3, line 19 to col. 4, line 4). Changing the order of steps does not render a claimed process non-obvious over the prior art, see *Ex parte Rubin*, 128 USPQ 440, 441, 442 (POBA 1959). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method with the steps of interweaving the cotton yarn with a white yarn and treating with a diazo salt as taught by Womble. One would have been motivated to modify the method to obtain a fabric with diverse patterns and coloring schemes.

***Response to Arguments***

10. Applicant's arguments filed on February 16 2007 have been fully considered but they are not persuasive.

a. Applicants argue on page 6 that the Womble reference is different from the claimed naphtholate dyes (page 6). The examiner respectfully disagrees as the naphtholate dye is taught by the Lundt et al. reference which also the equivalency of the sulfur and naphtholate dyes featured in the dyeing method. Furthermore, the sulfur dye is not excluded in view of the open-ended comprising language.

b. Applicants argue the order of steps in the Womble reference (page 6). The examiner respectfully disagrees as the amended claim 1 does not require a specific order of steps. In light of a broad interpretation, the amended claim is construed as a method of achieving stone-washing effect on a fabric in which the steps of making the fabric themselves are not active steps. Furthermore, changing the order of steps does not render a claimed process non-obvious over the prior art, see Ex parte Rubin, 128 USPQ 440, 441, 442 (POBA 1959) unless criticality of the sequential steps is demonstrated.

***Conclusion***

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

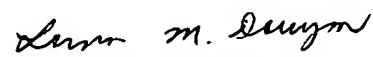
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri V. Nguyen whose telephone number is (571) 272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NVT

NVT, PhD  
April 5, 2007

  
LORNA M. DOUYON  
PRIMARY EXAMINER